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Excerpt of Transcript for Conference with Judge Freeman on April 8, 2022 - Chen's Counsel Falsely Represented to the Court that Shayne's TCS was on the Back of the Original POA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
                                       Docket #17cv8834
 AMERIWAY CORPORATION,   : 1:17-cv-08834-AT-VF

                   Plaintiff,   :

   - against -   :

 CHEN, et al.,   : New York, New York
                                      April 8, 2022
                   Defendants.   :

-------------------------------------- : <u>TELEPHONE CONFERENCE</u>

PROCEEDINGS BEFORE
THE HONORABLE DEBRA FREEMAN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings conducted telephonically and recorded by
electronic sound recording;
Transcript produced by transcription service.

APPEARANCES (CONTINUED):

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2   THE COURT: All right, now with respect to the

3   other issue that was put in front of me, which relates to

4   this document called Terms and Conditions of Services,

5   which was filed by Mr. Schrier in November, plaintiff is

6   suggesting that there's an authenticity issue with that

7   document, has given reasons why there is an authenticity

8   issue with that document or why they have a good faith

9   basis for believing that, and say they have served

10 discovery requests aimed at getting at I guess electronic

11 information to try to show when the document was created

12 and also statements by defendant going toward when and

13 how that document was created. And defendants' position

14 with respect to responding to these document requests and

15 interrogatories, do you want to explain your position on

16 this record?

17   MR. SCHRIER: I think it's really the notice to

18 admit. Counsel served notice to admit --

19   THE COURT: Well, wait, wait, wait. No, I have

20 a second set of interrogatories, I have a second set of

21 requests for admissions. I also have a third set of

22 requests for production of documents. I've been given as

23 attachments three sets of discovery demands.

24   MR. SCHRIER: The - with regard to the notice to

25 admit, from my understanding, the penalty for, on the

          MR. SCHRIER: You're asking about my litigation

strategy I think, Judge, (indiscernible) correct that I

do not have to answer that question. But I understand

what you – you've pinpointed an issue that we discussed

over here and we made certain litigation decisions. So,

yes, I understand that, what you're saying. I

respectfully request that I don't have to answer that.

          THE COURT: All right, well, let's turn to the

discovery demands then where --

          MR. SCHRIER: If I could --

          THE COURT: -- the plaintiff is seeking to

compel responses.

          MR. SCHRIER: If I could. Here's the problem

that we're having, Judge, we're trying to figure it out

ourselves. On the power of attorney, on the reverse side

of the power of attorney, there are terms and conditions.

Those terms and conditions are on the client's website

with the power of attorney. So anyone can just go to it.

The question is when that website was started and what

the procedure was before it was started in terms of hard

copies, what was done and not done in a normal regular

course of business. I, frankly, had a vacation in

between when this witness came down, so I've been, I've

definitely been tardy on this, so I – but the fact is I'm

trying to figure it out myself, and I don't have the

answer right now.

      We've been in communication with the client as

recently as yesterday on this issue, and we're trying to

determine when - we know that the terms and conditions

have existed for 15, 20 years. What we don't know is

procedurally how it was communicated to the clients and

more specifically to this client, meaning Eagle not to,

not to Ameriway, but to Eagle. They're the one who

signed the power of attorney.

      So I'm endeavoring to do that. I hope to get

that squared away hopefully in the next week or two.

We're trying, we're really trying to figure it out. It's

not an easy task, unfortunately. It's not so readily

available.

      THE COURT: When you say these were in existence

for years --

      MR. SCHRIER: Yes.

      THE COURT: -- in existence electronically for

years?

      MR. SCHRIER: Well, the answer is yes, but they

were also - procedurally the powers of attorney were

sent, signed and sent back, and the ones that were sent

would have on the rear of the power of attorney this term

and conditions. That's what the document was set up as.
Whether – when things started to get emailed and not hard
copies back and forth, I don't know and I'm trying to
determine because the people that were doing this in my
client's company are no longer there and we're trying –
we know what the intended procedure is. We're trying to
determine whether it was done in this particular case.

It's our understanding, just so, it's that
whenever anything was sent, the terms and conditions were
also sent. We're trying to find proof of that so we can
satisfy the plaintiff's request. We know what the terms
and conditions say, we've produced that already. We've
given copies to them. It's not a matter of we don't know
what the terms and conditions say; what they're trying
to, what they would be arguing if I were they is we never
got that, and we believe they did get that, and I can't,
and I'm trying to find the proof that they were provided
with those terms and conditions. That's the issue at
hand.

THE COURT: That's a narrow issue, but the
document requests and interrogatories ask for a lot of
specific information. So even if you can't quite figure
out the answer to what you think is the bottom line
question, you could still produce native files of a

C E R T I F I C A T E

    I, Carole Ludwig, certify that the foregoing

transcript of proceedings in the case of Ameriway

Corporation versus Chen, et al., Docket #19cv9407, was

prepared using digital transcription software and is a

true and accurate record of the proceedings.

Signature_____*Carole Ludwig*_____

              Carole Ludwig

Date: June 7, 2022